

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

PRUVIT VENTURES, INC.,

Plaintiff,

v.

PEBBLE GLOBAL HOLDINGS
dba PEBBLE, and
ACQUIFLOW, LLC,

Defendants.

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Civil Action No. 4:19-cv-520

Jury Trial Demanded

COMPLAINT AND JURY DEMAND

Plaintiff Pruvit Ventures, Inc. (hereinafter “Pruvit” or “Plaintiff”), as its complaint against Defendants Pebble Global Holdings dba Pebble and AcquiFlow LLC (hereinafter collectively referred to as “Pebble” or “Defendants”), alleges as follows:

The Parties

1. Plaintiff Pruvit Ventures, Inc. is a corporation incorporated and existing under the laws of the State of Texas and having a principal place of business at 901 Sam Rayburn Highway, Melissa, TX 75454.

2. Upon information and belief, Defendant AcquiFlow, LLC is a limited liability company organized and existing under the laws of the State of Texas and has a principal place of business at 1108 Kerrville, McKinney, TX 75070 and is doing business in this federal judicial district. Upon information and belief, Defendant Pebble Global Holdings dba Pebble, a wholly-owned subsidiary of Defendant AcquiFlow, LLC, is an entity organized and existing under the

laws of the State of Texas and has a principal place of business at 1108 Kerrville, McKinney, TX 75070 and is doing business in this federal judicial district.

Jurisdiction and Venue

3. This Court has jurisdiction over the Federal Trademark (Lanham) Act claims pursuant to Title 28, United States Code §§ 1331 and 1338 in that they are civil actions arising under an Act of Congress relating to trademarks and unfair competition, Title 15, United States Code §§ 1051 and 1121. This Court has jurisdiction over the state law unfair competition claims pursuant to Title 28, United States Code § 1338(b) and has jurisdiction over any remaining claims under the doctrine of pendent jurisdiction.

4. Venue is proper in the Eastern District of Texas pursuant to Title 28, United States Code § 1391(b) and (d) in that the claims, as set forth hereafter, arose in such District. Moreover, upon information and belief, all parties are headquartered and conduct substantial business within such District.

COUNT I


Federal Trademark Infringement

5. This Count arises under the Federal Trademark (Lanham) Act, Title 15, United States Code §§ 1051-1127, as hereinafter more fully appears, and jurisdiction is based upon Title 15, United States Code, § 1121, Title 28, United States Code §§ 1331 and 1338. In support of this ground for relief, Pruvit realleges Paragraphs 1 through 4 hereinabove.

6. Pruvit owns and operates an internationally popular and rapidly growing multi-level marketing business dedicated to the modernization of health supplements. Since opening its doors in November 2014, Pruvit has been recognized for its exceptional technologically-advanced health products on a global scale. As explained on the Pruvit website

(www.pruvitnow.com), Pruvit has sold over 100 million servings in at least seven (7) different countries. Through exceptional products, a creative marketing plan, and a dedicated team, Pruvit has gained tremendous recognition and built extraordinary goodwill for its brand.

7. As part of a coordinated strategy to recognize and protect the substantial value of its brand, Pruvit has formally sought and obtained federal trademark protection with the U.S. Patent and Trademark Office (and the trademark offices of other countries) for a large number of trademarks. Among those is the following:

U.S. Trademark Registration No.	5,031,800
Mark	
Goods/Services	“Dietary and nutritional supplements, in International Class 5”
Date of First Use in Interstate Commerce	May 22, 2015



A true copy of said registration is attached hereto and made a part hereof as Exhibit A.

8. Notwithstanding Pruvit’s well known and prior common law and statutory rights in the above trademarked design, Defendants, with actual and/or constructive notice of Pruvit’s federal registration rights under Title 15, United States Code § 1072, and after Pruvit established its rights in its trademarked design, adopted and used a confusingly similar mark in Texas and in interstate commerce in connection with dietary and nutritional supplements—namely, CBD

(Cannabidiol) products. As can be seen, Defendants' mark is strikingly similar (almost identical) to Pruvit's registered mark:



9. For ease of comparison, below is a side-by-side illustration. On the left is Pruvit's federally-registered trademark, while the right depicts Defendants' infringing logo:

Pruvit's Registered Trademark	Defendants' Infringing Logo
	

10. In addition to the marks themselves being virtually identical, Defendants' products bearing the infringing logo easily fall within the scope of "Dietary and nutritional supplements" identified in Pruvit's trademark registration. On Defendants' website <https://pebble.life/>, Defendants make numerous claims, including that:

- "A Pebble-sized Daily Serving of our Premium Hemp-Based CBD Supplements Can Create a Powerful Ripple Effect in Your Life For the Better"

- “The potential for big benefits to your physical and emotional well-being can be unleashed by a small but potent change: add Pebble hemp-based CBD supplements to your health regimen.”
- “Additionally, our proprietary blends are specially formulated to boost the already powerful benefits of Hemp-CBD. Hemp-CBD extract has been shown to decrease inflammation, pain, and anxiety. It can improve mood, help individuals with neurological disorders, and address a myriad of other health issues.”

Accordingly, there can be no reasonable disagreement that Defendants’ CBD products are marketed by Defendants as “Dietary and nutritional supplements.”

11. For ease of comparison, below are representative examples of Pruvit’s products (on the left) and Defendants’ products (on the right).

Plaintiff Pruvit’s Product	Defendant Pebble’s Product
	

A true and correct copy of representative screenshots of Defendants’ website <https://pebble.life/> is attached hereto and made a part hereof as Exhibit B.

12. Defendants have sold or offered for sale in the Eastern District of Texas (and in interstate commerce) dietary and nutritional supplements while utilizing a strikingly similar logo to attract consumers, thus creating a substantial likelihood of confusion, deception and mistake. Defendants' acts of infringement have been, and continue to be, committed in the Eastern District of Texas, Sherman Division, within the jurisdiction of this Court. In fact, the physical location of Defendants' business is in McKinney, Texas, just 13.8 miles from the physical location of Pruvit's business in Melissa, Texas—both of which are in Collin County.

13. Defendants' use in commerce of the copycat logo in direct competition with Pruvit is a clear and willful infringement of Pruvit's registered trademark design, in violation of Title 15, United States Code § 1114(1), as well as an infringement of Pruvit's common law trademark rights. Moreover, Defendants' acts of infringement have caused, and will continue to cause, irreparable injury to Pruvit if Defendants are not restrained by this Court from further violation of Pruvit's federal trademarks rights.

COUNT II

Federal Unfair Competition

14. In support of this ground for relief, Pruvit repeats and realleges Paragraphs 1 through 13 hereinabove.

15. Pruvit's trademarked design has become uniquely associated with and hence identifies Pruvit and its products. Defendants' use of the infringing mark for dietary and nutritional wellness products is a false designation of origin, or a false representation, which wrongfully and falsely designates Defendants' products as originating from or in association with Pruvit.

16. Defendants' acts are in violation of Title 15, United States Code § 1125(a).

COUNT III

Common Law Unfair Competition

17. In support of this ground for relief, Pruvit repeats and realleges Paragraphs 1 through 16 hereinabove.

18. By virtue of Defendants' acts, hereinabove pleaded, Defendants have engaged in unfair competition with Pruvit in violation of the common law of the State of Texas.

WHEREFORE, Plaintiff Pruvit Ventures, Inc. prays for judgment in its favor against Defendants Pebble Global Holdings dba Pebble and AcquiFlow LLC as follows:

A. That Defendants, their officers, directors, employees, agents and attorneys and all those persons in active concert with any of them be preliminarily and thereafter permanently enjoined and restrained from:

1. Using the infringing mark depicted above (or any confusingly similar variations thereof), whether alone or in combination with other designs/words, as a trademark, trade name component or otherwise, to market, advertise or identify Defendants' products;
2. Otherwise infringing on Plaintiff Pruvit's federally registered trademark;
3. Unfairly competing with Plaintiff Pruvit in any manner whatsoever; and
4. Causing likelihood of confusion, injury to business reputation, or dilution of the distinctiveness of Plaintiff Pruvit's marks, trade designations, or other identifiers for its goods.

B. That Defendants be required to remove the infringing mark from its website(s) and products and deliver up and destroy all advertising, signage, and other material bearing the infringing mark;

C. That Plaintiff Pruvit be awarded Defendants' trademark infringement profits after an accounting and that Plaintiff Pruvit recover its lost profits and all other consequential damages;

D. That Plaintiff Pruvit recover its actual damages resulting from Defendants' unfair competition;

E. That Defendants be directed to file with this Court and serve on Plaintiff Pruvit within thirty (30) days after the issuance of an injunction, a report in writing under oath, setting forth in detail the manner and form in which Defendants have complied with any injunction issued;

F. That Plaintiff Pruvit have and recover costs in this suit with pre-judgment and post-judgment interest on all awards;

G. That Plaintiff Pruvit be awarded reasonable attorney fees; and

H. That Plaintiff Pruvit have such other and further relief which this Court deems just and proper.

Jury Demand

Plaintiff Pruvit Ventures, Inc. hereby demands trial by jury on all issues so triable.

Dated: July 12, 2019

Respectfully submitted,

By: /s/ Kelly J. Kubasta

Kelly J. Kubasta

Texas Bar No. 24002430

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